
HOUSE BILL No. 1404

DIGEST OF INTRODUCED BILL

Citations Affected: IC 3-5-4.5-3; IC 3-7-26.3; IC 3-10-1; IC 3-11-10; IC 3-11.5-4.

Synopsis: Declaration of party affiliation. Removes a requirement that a voter declare a political party affiliation before voting in a primary election. Requires that a voter privately be able to select the ballot of the party that voter intends to vote for in a primary election. Requires that the Indiana election commission approve standards and procedures for voting methods to assure that a voter privately may select the ballot of the political party that the voter intends to vote for in a primary election. Repeals provisions concerning voter challenges because of political party affiliation and the handling of party identification cards used with electronic voting systems.

Effective: July 1, 2009.

Stevenson

January 13, 2009, read first time and referred to Committee on Elections and Apportionment.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1404

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 3-5-4.5-3, AS ADDED BY P.L.164-2006,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 3. Except as permitted in a primary election under
4 IC 3-10-1, a person may not challenge the right of an individual to vote
5 at an election in the precinct solely on the basis of the individual's

6 (1) ~~actual or perceived affiliation with a political party; or~~

7 (2) support or opposition to a candidate or the adoption of a
8 public question.

9 SECTION 2. IC 3-7-26.3-22 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 22. The computerized
11 list must contain at least the following information for each voter:

12 (1) The voter's voting history for at least the previous ten (10)
13 years, if available. ~~including the political party ballot requested by~~
14 ~~the voter at any primary election during the period:~~

15 (2) The source of the voter's registration application.

16 (3) A listing of all previous addresses at which the voter was
17 registered to vote during at least the previous ten (10) years, if

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available.

(4) Information concerning the documentation submitted by the voter to comply with the requirements of HAVA.

(5) Documentation of all changes to the registration made by the voter.

(6) Documentation concerning all notices sent to the voter by the county voter registration office.

SECTION 3. IC 3-7-26.3-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 29. The computerized list must include voter registration management features that do the following:

(1) Automatically assign voter identification numbers in accordance with this title.

(2) Calculate the number of registered voters by precinct or any election district.

(3) Permit expedited web based inquiries concerning polling place locations.

(4) Track and report all voter list maintenance transactions performed within the system.

~~(5) Permit tracking regarding the political party ballot requested by voters voting in a primary.~~

~~(6)~~ (5) Generate a variety of reports on paper, compact disc, or floppy disc format, such as walking lists, call lists, lists of voters by precinct, lists of voters by name, date of birth, or date of registration, and lists of voters by other household data.

~~(7)~~ (6) Identify voters who are currently less than eighteen (18) years of age.

~~(8)~~ (7) Permit electronic processing of voter registration information received as files from other state and federal agencies.

~~(9)~~ (8) Provide flexible query functions for management and statistical reports, including the ability of the secretary of state or a co-director of the election division to view individual voter registration records.

~~(10)~~ (9) Contain full audit controls and management reports to track and manage the work of county voter registration office employees, including the ability of the secretary of state or the co-directors of the election division to determine whether a county voter registration office is performing voter list maintenance functions in the manner required by IC 3-7.

SECTION 4. IC 3-10-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. A voter may vote at a primary

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election

(1) if the voter, at the last general election, voted for a majority of the regular nominees of the political party holding the primary election; or

(2) if the voter did not vote at the last general election, but intends to vote at the next general election for a majority of the regular nominees of the political party holding the primary election;

as long as if the voter was registered as a voter at the last general election or has registered since then.

SECTION 5. IC 3-10-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. A voter in a precinct may challenge a voter or person who offers to vote at a primary election. The challenged person may not vote unless the challenged person:

(1) is registered; **and**

(2) makes:

(A) an oral or a written affirmation under IC 3-10-12; or

(B) an affidavit:

(i) that the challenged person is a voter of the precinct; or

(ii) required under IC 3-10-11 if the voter declares that the voter is entitled to vote under IC 3-10-11. **and**

(3) either:

(A) at the last general election voted for a majority of the regular nominees of the political party for whose candidates the challenged person proposes to vote in the primary election and intends to vote for the regular nominees of the political party at the next general election; or

(B) if the challenged person did not vote at the last general election, intends to vote at the next general election for a majority of the regular nominees of the political party holding the primary election.

SECTION 6. IC 3-10-1-10.5, AS AMENDED BY P.L.164-2006, SECTION 69, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10.5. (a) This section does not apply to a voter who is challenged under section 10 of this chapter on the basis of party affiliation.

(b) In accordance with 42 U.S.C. 15482, a voter challenged under this chapter is entitled to cast a provisional ballot under IC 3-11.7 after executing the affidavit under section 9 of this chapter.

SECTION 7. IC 3-10-1-24, AS AMENDED BY P.L.164-2006, SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 24. (a) A voter who desires to vote must give the voter's name **and political party** to the poll clerks of the precinct on

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primary election day. The poll clerks shall require the voter to write the following on the poll list:

(1) The voter's name.

(2) Except as provided in subsection (d), the voter's current residence address.

~~(3) The name of the voter's party.~~

(b) The poll clerks shall:

(1) ask the voter to provide or update the voter's voter identification number;

(2) tell the voter the number the voter may use as a voter identification number; and

(3) explain to the voter that the voter is not required to provide a voter identification number at the polls.

(c) If the voter is unable to sign the voter's name, the voter must sign the poll list by mark, which must be witnessed by one (1) of the poll clerks or assistant poll clerks acting under IC 3-6-6, who shall place the poll clerk's or assistant poll clerk's initials after or under the mark.

(d) Each line on a poll list sheet provided to take a voter's current residence address must include a box under the heading "Address Unchanged" so that a voter whose residence address shown on the poll list is the voter's current residence address may check the box instead of writing the voter's current residence address on the poll list.

SECTION 8. IC 3-10-1-24.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 24.8. (a) After the voter signs the poll list, the voter privately shall select the political party ballot that the voter intends to vote for in the primary election as provided in section 25 or 27 of this chapter.**

(b) The commission shall approve standards and procedures for voting methods to assure that a voter privately may select the ballot of the political party that the voter intends to vote for in the primary election.

SECTION 9. IC 3-10-1-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 25. (a) If paper ballots are used in a precinct, ~~one (1) of the poll clerks or assistant poll clerks shall deliver to a voter one (1) of the voter's political party ballots and a pencil after the voter signs the poll list,~~ the voter privately shall take the ballot and pencil into an election booth select the political party ballot that the voter intends to vote for in the primary election and mark the ballot within the time provided under IC 3-11-11-10.5.**

(b) If a ballot card voting system is used in a precinct, one (1) of the poll clerks or assistant poll clerks shall ~~deliver to a~~ instruct the voter

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one (1) of the voter's political party ballot cards and instructions on how to operate the ballot card system as described in IC 3-11-13-29 and IC 3-11-13-30. The voter **privately** shall ~~take the ballot card into the voting booth~~ **select the political party ballot card that the voter intends to vote for in the primary election** and mark the ballot within the time provided under IC 3-11-13-32.5.

SECTION 10. IC 3-10-1-27, AS AMENDED BY P.L.221-2005, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 27. If electronic voting systems are used in a precinct, ~~one (1) of the poll clerks shall give a printed political party identification card to a voter after the voter signs the poll list. Before entering the voting booth, the voter must give the party identification card to a judge; and the judge shall set or have be able to select privately the political party ballot that the voter intends to vote for in the primary election, and the electronic voting system set to allow must limit the voter to vote voting only for the candidates of the voter's party. After the system is set, that the voter selects. After selecting a political party ballot on the electronic voting system, the voter may register a vote upon it the system within the time provided under IC 3-11-14-26.~~

SECTION 11. IC 3-11-10-16, AS AMENDED BY P.L.221-2005, SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) If the inspector finds under section 15 of this chapter that:

- (1) the affidavit is properly executed;
- (2) the signatures correspond;
- (3) the absentee voter is a qualified voter of the precinct;
- (4) the absentee voter is registered and is not required to file additional information with the county voter registration office under IC 3-7-33-4.5;
- (5) the absentee voter has not voted in person at the election; and
- (6) in case of a primary election, if the absentee voter has not previously voted, the absentee voter has executed the proper declaration relative to age and qualifications; ~~and the political party with which the absentee voter intends to affiliate;~~

then the inspector shall open the envelope containing the absentee ballots so as not to deface or destroy the affidavit and take out each ballot enclosed without unfolding or permitting a ballot to be unfolded or examined.

(b) The inspector shall then hand the ballots to the judges who shall deposit the ballots in the proper ballot box and enter the absentee voter's name on the poll list, as if the absentee voter had been present

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and voted in person. The judges shall mark the poll list to indicate that the voter has voted by absentee ballot. If the voter has registered and voted under IC 3-7-36-14, the inspector shall attach to the poll list the circuit court clerk's certification that the voter has registered.

SECTION 12. IC 3-11-10-17, AS AMENDED BY P.L.198-2005, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. (a) If the inspector finds under section 15 of this chapter that any of the following applies, a ballot may not be accepted or counted:

(1) The affidavit is insufficient or the ballot has not been endorsed with the initials of:

(A) the two (2) members of the absentee voter board in the office of the circuit court clerk under IC 3-11-4-19 or section 27 of this chapter;

(B) the two (2) members of the absentee voter board visiting the voter under section 25(b) of the chapter; or

(C) the two (2) appointed members of the county election board or their designated representatives under IC 3-11-4-19.

(2) A copy of the voter's signature has been furnished to the precinct election board and that the signatures do not correspond or there is no signature.

(3) The absentee voter is not a qualified voter in the precinct.

(4) The absentee voter has voted in person at the election.

(5) The absentee voter has not registered.

(6) The ballot is open or has been opened and resealed. This subdivision does not permit an absentee ballot transmitted by fax or electronic mail under IC 3-11-4-6 to be rejected because the ballot was sealed in the absentee ballot envelope by the individual designated by the circuit court to receive absentee ballots transmitted by fax or electronic mail.

(7) The ballot envelope contains more than one (1) ballot of any kind for the same office or public question.

(8) In case of a primary election, if the absentee voter has not previously voted, the voter failed to execute the proper declaration relative to age and qualifications. ~~and the political party with which the voter intends to affiliate.~~

(9) The ballot has been challenged and not supported.

(b) Subsection (c) applies whenever a voter with a disability is unable to make a signature:

(1) on an absentee ballot application that corresponds to the voter's signature in the records of the county voter registration office; or

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(2) on an absentee ballot secrecy envelope that corresponds with the voter's signature:

(A) in the records of the county voter registration office; or

(B) on the absentee ballot application.

(c) The voter may request that the voter's signature or mark be attested to by:

(1) the absentee voter board under section 25(b) of this chapter;

(2) a member of the voter's household; or

(3) an individual serving as attorney in fact for the voter.

(d) An attestation under subsection (c) provides an adequate basis for an inspector to determine that a signature or mark complies with subsection (a)(2).

SECTION 13. IC 3-11.5-4-12, AS AMENDED BY P.L.221-2005, SECTION 97, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12. (a) If the absentee ballot counters find under section 11 of this chapter that:

(1) the affidavit is properly executed;

(2) the signatures correspond;

(3) the absentee voter is a qualified voter of the precinct;

(4) the absentee voter is registered and is not required to file additional information with the county voter registration office under IC 3-7-33-4.5;

(5) the absentee voter has not voted in person at the election; and

(6) in case of a primary election, if the absentee voter has not previously voted, the absentee voter has executed the proper declaration relative to age and qualifications; ~~and the political party with which the absentee voter intends to affiliate;~~

the absentee ballot counters shall open the envelope containing the absentee ballots so as not to deface or destroy the affidavit and take out each ballot enclosed without unfolding or permitting a ballot to be unfolded or examined.

(b) If the absentee ballot counters find under subsection (a) that the voter has not filed the additional information required to be filed with the county voter registration office under IC 3-7-33-4.5, but that all of the other findings listed under subsection (a) apply, the absentee ballot shall be processed as a provisional ballot under IC 3-11.7.

(c) The absentee ballot counters shall then deposit the ballots in a secure envelope with the name of the precinct set forth on the outside of the envelope. After the absentee ballot counters or the county election board has made the findings described in subsection (a) or section 13 of this chapter for all absentee ballots of the precinct, the absentee ballot counters shall remove all the ballots deposited in the

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envelope under this section for counting under IC 3-11.5-5 or IC 3-11.5-6.

SECTION 14. IC 3-11.5-4-13, AS AMENDED BY P.L.198-2005, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13. (a) If the absentee ballot counters find under section 11 of this chapter that any of the following applies, the ballots shall be rejected:

(1) The affidavit is insufficient or that the ballot has not been endorsed with the initials of:

(A) the two (2) members of the absentee voter board in the office of the clerk of the circuit court under IC 3-11-4-19 or IC 3-11-10-27;

(B) the two (2) members of the absentee voter board visiting the voter under IC 3-11-10-25; or

(C) the two (2) appointed members of the county election board or their designated representatives under IC 3-11-4-19.

(2) The signatures do not correspond or there is no signature.

(3) The absentee voter is not a qualified voter in the precinct.

(4) The absentee voter has voted in person at the election.

(5) The absentee voter has not registered.

(6) The ballot is open or has been opened and resealed. This subdivision does not permit an absentee ballot transmitted by fax or electronic mail under IC 3-11-4-6 to be rejected because the ballot was sealed in the absentee ballot envelope by the individual designated by the circuit court to receive absentee ballots transmitted by fax or electronic mail.

(7) The ballot envelope contains more than one (1) ballot of any kind for the same office or public question.

(8) In case of a primary election, if the absentee voter has not previously voted, the voter failed to execute the proper declaration relative to age and qualifications, ~~and the political party with which the voter intends to affiliate.~~

(9) The ballot has been challenged and not supported.

(b) Subsection (c) applies whenever a voter with a disability is unable to make a signature:

(1) on an absentee ballot application that corresponds to the voter's signature in the records of the county voter registration office; or

(2) on an absentee ballot security envelope that corresponds with the voter's signature:

(A) in the records of the county voter registration office; or

(B) on the absentee ballot application.

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(c) The voter may request that the voter's signature or mark be attested to by any of the following:

(1) The absentee voter board under section 22 of this chapter.

(2) A member of the voter's household.

(3) An individual serving as attorney in fact for the voter.

(d) An attestation under subsection (c) provides an adequate basis for the absentee ballot counters to determine that a signature or mark complies with subsection (a)(2).

(e) If the absentee ballot counters are unable to agree on a finding described under this section or section 12 of this chapter, the county election board shall make the finding.

(f) The absentee ballot counters or county election board shall issue a certificate to a voter whose ballot has been rejected under this section if the voter appears in person before the board not later than 5 p.m. on election day. The certificate must state that the voter's absentee ballot has been rejected and that the voter may vote in person under section 21 of this chapter if otherwise qualified to vote.

SECTION 15. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2009]: IC 3-10-1-10; IC 3-10-1-28.

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